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HOUSE BILL 413

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Nick L. Salazar

AN ACT

RELATING TO TAXATION; ENACTING THE ADVANCED ENERGY PRODUCT
MANUFACTURERS TAX CREDIT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Advanced Energy Product Manufacturers Tax Credit Act".

Section 2. DEFINITIONS.--As used in the Advanced Energy
Product Manufacturers Tax Credit Act:

A. "advanced energy" means alternative fuels,
renewable energy and fuel cells;

B. "advanced energy business" means a taxpayer
whose business activity is manufacturing of equipment,
component parts, materials, electronic devices, hybrid electric
vehicle component devices and testing equipment and related
systems that are solely related to advanced energy systems and

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1 alternative fueled vehicles;

2 C. "advanced energy system" means a system that
3 converts renewable energy resources and hydrogen to
4 electricity, including related cogeneration systems that
5 produce heat or steam for space or water heating and
6 agricultural or small industrial processes, or to create
7 mechanical energy. An "advanced energy system" includes a:

- 8 (1) fuel cell energy system;
- 9 (2) photovoltaic energy system;
- 10 (3) solar-thermal energy system;
- 11 (4) wind energy system;
- 12 (5) combined heat and power energy system;
- 13 (6) microturbine energy system;
- 14 (7) mini-turbine energy system;
- 15 (8) sterling cycle energy system;
- 16 (9) battery cell energy system;
- 17 (10) electricity storage system; or
- 18 (11) hydrogen production or reforming system;

19 D. "alternative fuel" means natural gas, liquefied
20 petroleum gas, electricity, hydrogen, a fuel mixture containing
21 not less than eighty-five percent ethanol or methanol, a fuel
22 mixture containing not less than twenty percent vegetable oil
23 or a water-phased hydrocarbon fuel emulsion consisting of a
24 hydrocarbon base and water in an amount not less than twenty
25 percent by volume of the total water-phased fuel emulsion;

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1 E. "alternative fueled vehicle" means a motor
2 vehicle manufactured by an original equipment manufacturer that
3 fully warrants and certifies that the motor vehicle meets the
4 federal motor vehicle safety standards and is designed to be
5 solely propelled by an alternative fuel;

6 F. "biomass" means agricultural or animal waste;
7 thinnings from trees, slash and brush; lumber mill or sawmill
8 residues; salt cedar and other phreatophytes removed from
9 watersheds or river basins; and any organic matter that is
10 available on a renewable or recurring basis, including
11 agricultural crops and trees, wood waste and residues, plants,
12 grasses, residues, fibers, and animal wastes, municipal wastes,
13 landfill gases and other waste materials;

14 G. "department" means the taxation and revenue
15 department, the secretary of taxation and revenue or any
16 employee of the department exercising authority lawfully
17 delegated to that employee by the secretary;

18 H. "low or zero emissions" means an electric
19 generation technology that produces zero emissions during
20 operation or that produces emissions to or less than limits
21 approved by the environmental improvement board;

22 I. "manufacturing equipment" means an essential
23 machine, mechanism or tool, or a component or fitting thereof,
24 used directly and exclusively in a manufacturing operation and
25 subject to depreciation for purposes of the Internal Revenue

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1 Code of 1986 by the taxpayer carrying on the manufacturing
2 operation. "Manufacturing equipment" does not include any
3 vehicle that leaves the site of the manufacturing operation for
4 purposes of transporting persons or property or any property
5 for which the taxpayer claims the credit pursuant to Section
6 7-9-79 NMSA 1978;

7 J. "pass-through entity" means any business
8 association other than:

9 (1) a sole proprietorship;

10 (2) an estate or trust;

11 (3) a corporation, limited liability company,
12 partnership or other entity not a sole proprietorship taxed as
13 a corporation for federal income tax purposes for the taxable
14 year; or

15 (4) a partnership that is organized as an
16 investment partnership in which the partners' income is derived
17 solely from interest, dividends and sales of securities;

18 K. "qualified expenditure" means any expenditure
19 made after July 1, 2004 by an advanced energy business during
20 the first ten years of operation for:

21 (1) the purchase of manufacturing equipment,
22 component parts, materials, electronic devices, hybrid electric
23 motor vehicle component devices and testing equipment and
24 related systems that are solely related to advanced energy
25 systems, alternative fueled vehicles and associated research

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1 and development; or

2 (2) the purchase of land for and construction
3 of a plant for the purpose of manufacturing equipment,
4 component parts, materials, electronic devices, hybrid electric
5 motor vehicle component devices and testing equipment and
6 related systems that are solely related to advanced energy
7 systems, alternative fueled vehicles and associated research
8 and development. "Qualified expenditure" does not include any
9 expenditure, contract or similar mechanism by another person or
10 governmental entity;

11 L. "qualified facility" means a factory, mill,
12 plant, refinery, warehouse, dairy, feedlot, building or complex
13 of buildings located within New Mexico, including the land on
14 which the facility is located and all equipment and tangible
15 personal property located at or within the facility and used in
16 connection with the operation of the facility;

17 M. "renewable energy" means thermal or electrical
18 energy generated by means of a low or zero-emissions generation
19 technology that has substantial long-term production potential,
20 including solar, wind, geothermal, landfill gas or biomass, but
21 does not include fossil fuel or nuclear power;

22 N. "research and development" means an activity
23 engaged in for one or more of the following purposes:

24 (1) advancing technology in the area of
25 advanced energy systems or alternative fueled vehicles;

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1 (2) developing new or improved advanced energy
2 systems or alternative fueled vehicles with new or improved
3 function, performance, reliability or quality, whether or not
4 the new or improved product, process or system is offered for
5 sale, lease or other transfer;

6 (3) developing new uses or applications for
7 existing advanced energy systems or alternative fueled
8 vehicles, whether or not the new use or application is offered
9 as the rationale for purchase, lease or other transfer of the
10 product, process or system;

11 (4) developing analytical or survey activities
12 incorporating technology review, application, trade-off study,
13 modeling, simulation, conceptual design or similar activities
14 for advanced energy systems or alternative fueled vehicles,
15 whether or not offered for sale, lease or other transfer; or

16 (5) designing and developing prototypes or
17 integrating systems incorporating the advances, developments or
18 improvements included in Paragraphs (1) through (4) of this
19 subsection; and

20 0. "taxpayer" means:

21 (1) a person liable for payment of any tax;
22 (2) a person responsible for withholding and
23 payment or collection and payment of any tax;

24 (3) a person to whom an assessment has been
25 made if the assessment remains unabated or the assessed amount

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1 has not been paid; or

2 (4) for purposes of the additional credit
3 against the taxpayer's income tax pursuant to the Advanced
4 Energy Product Manufacturers Tax Credit Act and to the extent
5 of their respective interest in that entity, the shareholders,
6 members, partners or other owners of:

7 (a) a small business corporation that
8 has elected to be treated as an S corporation for federal
9 income tax purposes; or

10 (b) an entity treated as a partnership
11 or disregarded entity for federal income tax purposes.

12 Section 3. ADMINISTRATION OF ACT.--The department shall
13 administer the Advanced Energy Product Manufacturers Tax Credit
14 Act pursuant to the Tax Administration Act.

15 Section 4. BASIC CREDIT--ADDITIONAL CREDIT--AMOUNTS--
16 CLAIMANT.--

17 A. The basic credit provided for in the Advanced
18 Energy Product Manufacturers Tax Credit Act is an amount equal
19 to five percent of the taxpayer's qualified expenditures in a
20 taxable year for a period of ten consecutive years.

21 B. The additional credit provided for in the
22 Advanced Energy Product Manufacturers Tax Credit Act is an
23 amount equal to five percent of the taxpayer's qualified
24 expenditures in a taxable year for a period of ten consecutive
25 years.

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1 Section 5. ELIGIBILITY REQUIREMENTS.--

2 A. A taxpayer who manufactures advanced energy
3 technology at a qualified facility and who has made qualified
4 expenditures is eligible to claim the basic credit pursuant to
5 the Advanced Energy Product Manufacturers Tax Credit Act.

6 B. A taxpayer who manufactures advanced energy
7 technology at a qualified facility and who has made qualified
8 expenditures is eligible to claim the additional credit
9 pursuant to the Advanced Energy Product Manufacturers Tax
10 Credit Act if:

11 (1) the taxpayer increases the taxpayer's
12 annual payroll expense at the qualified facility by at least
13 fifty thousand dollars (\$50,000) over the base payroll expense
14 of the taxpayer;

15 (2) the increase in Paragraph (1) of this
16 subsection has not previously been used to meet the
17 requirements of this subsection; and

18 (3) there is at least a fifty-thousand-dollar
19 (\$50,000) increase in the taxpayer's annual payroll expense for
20 every one million dollars (\$1,000,000) in qualified
21 expenditures claimed by the taxpayer in a taxable year in the
22 same claim.

23 Section 6. QUALIFIED EXPENDITURES.--The amount of the
24 taxpayer's qualified expenditure is the purchase price for the
25 relevant land, plant or equipment; provided that if the

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1 equipment has been owned by a taxpayer for more than one year
2 before its introduction into New Mexico and installation into
3 an advanced energy business, the qualified expenditure is the
4 reasonable market value of the equipment at the time of its
5 introduction into New Mexico.

6 Section 7. CLAIMING THE CREDIT.--

7 A. A taxpayer may apply for approval of a credit
8 within one year following the end of the calendar year in which
9 the qualified expenditure was made.

10 B. A taxpayer having applied for and been granted
11 approval for a basic credit by the department pursuant to the
12 Advanced Energy Product Manufacturers Tax Credit Act may claim
13 the amount of the approved basic credit against the taxpayer's
14 compensating tax, gross receipts tax or withholding tax due to
15 the state of New Mexico, provided that no taxpayer may claim an
16 amount of approved basic credit for any reporting period that
17 exceeds the sum of the taxpayer's gross receipts tax,
18 compensating tax and withholding tax due for that reporting
19 period.

20 C. A taxpayer who has applied for and been granted
21 approval for an additional credit by the department pursuant to
22 the Advanced Energy Product Manufacturers Tax Credit Act may
23 claim the amount of the approved additional credit against the
24 taxpayer's income tax or corporate income tax due the state of
25 New Mexico; provided that:

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1 (1) no taxpayer may claim an amount of
2 approved additional credit for any reporting period that
3 exceeds the amount of the taxpayer's income tax or corporate
4 income tax due for that reporting period; and

5 (2) a husband and wife who file separate
6 returns for a taxable year in which they could have filed a
7 joint return may each claim only one-half of the additional
8 credit that would have been allowed them on a joint return.

9 D. Any amount of approved basic credit not claimed
10 against the taxpayer's gross receipts tax, compensating tax or
11 withholding tax due and any amount of approved additional
12 credit not claimed against the taxpayer's income tax or
13 corporate income tax due for a reporting period may be claimed
14 in subsequent reporting periods; provided that a husband and
15 wife who file separate returns for a taxable year in which they
16 could have filed a joint return may each claim only one-half of
17 the additional credit that would have been allowed them on a
18 joint return. In the case of an advanced energy business that
19 is operating as a pass-through entity, the business may pass
20 through its credits to its owners, which may claim the credits
21 against their personal income tax or personal income tax
22 liability. A pass-through entity may take the credit based on
23 its percentage of ownership in the business.

24 Section 8. CREDIT CLAIM FORMS.--The department shall
25 provide credit claim forms. A credit claim shall accompany any

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1 return in which the taxpayer wishes to apply for an approved
2 basic or additional credit, and the claim shall specify the
3 amount and type of credit intended to apply to each return.

4 Section 9. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2004.

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